Crl 1113/93 (2)

-188/(Jail)
C.J.P.R.—5,000-9-81

APPEAL OF PRISONER

CF0000057533

No. A6 Name नाथूराम

Father's name [illegible]

Residence ~~मरोल था कोसाबेड~~ Age 48 ST No [illegible]

Sentenced to ~~[illegible]~~ आजीवन कारावास on 28/5/93

Under section 302 भा.द.वि. by अपर सेज न्याय जोधपुर नगर

जिला जोधपुर मि म ं

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 28/5/93

2 Date of which copy received 29/5/93

3 Date on which Appeal sent 29/5/93

4 Whether the prisoner wishes to be represented or not – Yes/~~No.~~

Regd

No. A6 Name नाथू राम

Continued in ~~[illegible]~~ Jail जोधपुर नगर

No. 6775 dated 29/5/93 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Raigarh

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

Superintendent
Sub Jail Jashpurnagar

Superintendent Central/ Distt./ Sub-Jail

Date of receipt in C. J. M.'S Office

Date of receipt of record to accompany

Memo of Appeal of the Appeliate Court.

No. Q/C J M Raigarh Dated 12.7.93 198

~~Forwarded to the~~ Submitted to — A J Raigarh (MP)

C.J.Magistrate

12.7.93

Date of receipt in Appliate Court

(P.T.O.)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 1113 OF 1993

Nanhooram

Vs.

State of Madhya Pradesh
(now State of Chhattisgarh)

J U D G M E N T

(Dated 29th Sept. 2005)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 1113 OF 1993

Nanhooram

Vs.

State of Madhya Pradesh
(now State of Chhattisgarh)

Coram :- Hon'ble Shri Fakhruddin, J &
Hon'ble Shri Dilip Raosaheb Deshmukh, J

Shri Ranbir Singh, Advocate with Miss Samta Jain, counsel for the appellant.

Shri Ravindra Agrawal, Panel Lawyer for the State/ respondent.

Per Dilip Raosaheb Deshmukh, J

J U D G M E N T

(Dated 29th Sept. 2005)

Heard.

2. This appeal is directed against the judgment dated 28-5-1993 delivered in Sessions Trial No.180/92 by the Additional Sessions Judge, Jashpur Nagar the then District Raigarh, whereby the appellant was convicted under Section 302 of the Indian Penal Code for committing murder of Kunjalram on 15-6-1992 in village Marol Mandar Toli and sentenced to undergo imprisonment for life.

3. Briefly stated the prosecution case is that appellant Nanhooram had borrowed an amount of Rs.100/- from Kunjalram. Whenever Kunjalram asked the appellant to repay the said amount, the appellant used to abuse him and threatened to assault him. On 15-6-1992, while Kunjalram was returning from the market, the appellant lay in wait for him. Near the house of Blasiyus (P.W.2), the appellant assaulted

several blows on the head of Kunjalram by lathi due to which Kunjalram died on the spot. First Information Report was lodged by Pawanram, P.W.1 vide Ex.P/1. Station House Officer Shri A.K. Khan, P.W.10 reached the spot, prepared the inquest memo vide Ex.P/2 and sent the body of the deceased for post-mortem. Dr. Y.K. Toppo, P.W.7 conducted the post-mortem on 16-6-1992 and found the following injuries :

1) *Lacerated wound seeming to be incised, on left side of face 1" below left angle of mouth vertically 2"x1"x1" margins irregular stained with dried blood.*

2) *Two lacerated wounds over forehead seeming to be incised, horizontally 1" above left eye brow. Another wound is just ½" above it each has got 2"x1"x1" with irregular margins.*

3) *Lacerated wound just over left temporal area of head 3"x1"x1" with stained dried blood and irregular margin just on left ear.*

4) *Abrasion in between both eye brows on forehead. It is superficial to skin 2 x 2 cms. brownish red in colour.*

5) *Bluish red dis-colouration over chest. It is 2" oval in shape. It over upper end of the sternum. Superficial to the skin.*

6) *Fracture or broken upper left hand. It is compound type fracture 4" above left elbow joint.*

In the opinion of Doctor Y.K. Toppo (P.W.7) death of Kunjalram was due to neurogenic shock as a result of external injuries No. 1 to 6 mentioned above. He opined that death was homicidal in nature. On the memorandum (Ex.P/8) of the appellant one lathi was seized vide Ex.P/9 from him. After

completion of investigation, the appellant was prosecuted under Section 302 of the Indian Penal Code.

4. The appellant abjured the guilt, pleaded innocence and led no evidence in defence.

5. The prosecution examined as many as 11 witnesses. The trial Judge relying upon the ocular testimony of Blasiyus, P.W2, Devanram, P.W.3 and Sudama, P.W.4 as also the medical evidence of Dr. Y.K. Toppo, P.W.7, convicted the appellant under Section 302 of the Indian Penal Code.

6. Learned counsel appearing for the appellant has contended that there is no legal and reliable evidence on record to establish the guilt on the appellant under Section 302 of the Indian Penal Code. He also contended that the offence, if any, was committed by the appellant upon a sudden quarrel and was not premeditated, therefore, the offence, if any, committed by the appellant would not travel beyond Section 304 Part-II of the Indian Penal Code. On the other hand, learned counsel appearing for the State argued in support of the judgment of the trial Judge.

7. We have considered the rival submissions and have also perused the record. The case of the prosecution rests on ocular testimony of Blasiyus (P.W.2), Devanram (P.W.3) and Sudama (P.W.4). Blasiyus (P.W.2) has stated in his evidence that he saw that Kunjalram was returning from the market along with Devanram, P.W.3. When they reached near his house, the accused suddenly started assaulting Kunjalram on

head, neck and hand by a lathi and dealt 5 to 6 blows by lathi on Kunjalram. Kunjalram fell on the ground and died on the spot. Blood was oozing from his nose, head and mouth. This testimony is corroborated by Devanram, P.W.3 as well as by an independent witness namely Sudama, P.W.4. Learned counsel for the appellant has not been able to point out anything in the cross-examination of these witnesses to rebut their testimony. The testimony of the above mentioned ocular witnesses is consistent, reliable and un-rebutted. We are, therefore, of the considered opinion that the trial Judge has rightly relied on the ocular evidence mentioned above and concluded that the appellant had inflicted the fatal blows on Kunjalram by a lathi. The testimony of Dr. Y.K. Toppo (P.W.7) also corroborates the evidence of the above mentioned ocular witnesses and proves that death of Kunjalram was homicidal. Considering the evidence led by the prosecution in its entirety, we are of the considered opinion that the trial Judge has rightly concluded that the appellant had caused the death of Kunjalram by assaulting with a lathi several times on vital parts.

8. The only question which requires our consideration is as to what offence was committed by the appellant. The testimony of the above mentioned ocular witnesses clearly shows that immediately before the occurrence no quarrel had ensued between the appellant and Kunjalram. The evidence shows that the appellant had laid himself in wait of Kunjalram and was fully prepared to kill him. The ocular testimony of the above mentioned witnesses and Dr. Y.K. Toppo, P.W.7 also

shows that the appellant had repeatedly assaulted Kunjalram by a lathi on the vital parts as a result of which Kunjalram succumbed to the injuries on the spot due to neurogenic shock.

9. Considering the evidence of the ocular witnesses in its entirety and also the medical evidence, we are of the considered opinion that the requisite intention for causing the death of Kunjalram can safely be attributed to the appellant and the evidence led by the prosecution establishes beyond doubt that the appellant had intentionally caused the death of Kunjalram by repeatedly assaulting on vital parts by lathi on 15-6-1992 in village Marol Mandar Toli. Thus the trial Judge has rightly convicted the appellant under Section 302 of the Indian Penal Code.

10. In the result, we find no substance in this appeal which fails and is accordingly dismissed.

Sd/-
Fakhruddin
Judge
29-9-2005

Sd/-
Dilip Raosaheb Deshmukh
Judge
29-9-2005

Gowri*